



## DECISION COVER SHEET

☒ ACTION BY: Public Members Only

☐ ACTION BY: All Members

To : BOARD MEMBERS

Date: May 4, 2017

From : ADMINISTRATIVE LAW JUDGE: Diana Woodward Hagle

CASE: CALIFORNIA NEW CAR DEALERS ASSOCIATION v. JAGUAR LAND ROVER  
NORTH AMERICA, LLC  
Protest No. PR-2463-16

TYPE: Vehicle Code section 3085 Export Prohibition Policy

### PROCEDURAL SUMMARY:

- FILED ON CALENDAR: February 9, 2016
- MOTIONS FILED: Respondent's Motion Objecting to Expert Witness Report and Deposition Testimony of Alan J. Skobin (denied)
- HEARING: January 9-10, 2017
- COUNSEL FOR PROTESTANT: Arent Fox LLP  
Halbert B. Rasmussen, Esquire  
Franjo M. Dolenac, Esquire
- COUNSEL FOR RESPONDENT: Hogan Lovells US LLP  
Colm A. Moran, Esquire

### EFFECT OF PROPOSED DECISION:

The Proposed Decision sustains the portion of the protest regarding Vehicle Code section 11713.3(y)(1), overrules the portion of the protest regarding Section 11713.3(y)(2), and deems the portion of the protest regarding Section 11713.3(y)(3) moot.

### SUMMARY OF PROPOSED DECISION:

- Even a cursory reading of Jaguar Land Rover North America, LLC's ("JLRNA") export policy reveals problems with its wording and interpretation. However, the only violation of Vehicle Code section 11713.3(y)(1) is the fact of the policy placing responsibility on the field auditor to make the initial determination of the dealer's knowledge or reason to know of the customer's intent to export and, based on this determination, to threaten "adverse actions," including monetary penalties and even termination.

- The Proposed Decision finds that no Unruh Act violation has taken place. No protected category has been referenced in JLRNA's Best Practices and "red flag" indicators. Therefore, no violation of Section 11713.3(y)(2) is found.
- The challenge based on Section 11713.3(y)(3) is moot, having been resolved by stipulation of the parties.
- The only issue before the Board is whether JLRNA's export prohibition policy violates Section 11713.3(y).
- Both dealers and JLRNA are harmed when a dealer's customer (or customer's principal) exports a newly purchased luxury vehicle to a foreign market for resale. The rationale and background for JLRNA even having an export prohibition policy is explained in the Proposed Decision in paragraphs 45 to 58 and stipulations of the parties in paragraph 24.
- Protestant was the legislative proponent of both Sections 3085 and 11713.3(y). Section 3085 gives "associations" standing to "challenge" the "legality" of export policies and Section 11713.3(y) sets the standards by which a policy will be judged. It is difficult to reconcile the two statutes unless it is approached in the manner in the Proposed Decision, by focusing on the only subjective criteria in Section 11713.3(y), which is intent or state of mind. Relief is limited to a declaration of whether the policy violates any of the three subdivisions of Section 11713.3(y).

#### **RELATED MATTERS:**

- Related Case Law: Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142; Frantz v. Blackwell (1987) 189 Cal.App.3d 91; Ross v. Forest Lawn Memorial Park (1984) 153 Cal.App.3d 988
- Applicable Statutes and Regulations: Vehicle Code sections 3050, 3060, 3065, 3065.1, 3085 et seq., and 11713.3; Civil Code section 51.